HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos.796, 805 and 826 of 2007

Writ Appeal No.796 of 2007

Between:

LANCO Hills Technology Park Pvt. Ltd.
Rep. by its anaging Director, Hyderabad

… Appellant

And

H.A. Rahman & others.

… Respondents

Writ Appeal No.805 of 2007

Between:

Emaar Properties represented by its
General Manager, Hyderabad.

… Appellant

And

H.A. Rahman & others.

… Respondents

Writ Appeal No.826 of 2007

Between:

The State of A.P. rep. by its Principal Secretary
to Government, Revenue Department, Hyderabad
and others

… Appellants

And

H.A. Rahman & others.

… Respondents

Counsel for the appellant in
Writ Appeal No.796 of 2007: Shri V.R. Manohar, Senior Advocate assisted by Shri C. Kodanda Ram and Shri Mahamood Ali

Counsel for the appellant in
Writ Appeal No.805 of 2007: Dr.A.M. Singhvi, Senior Advocate assisted by Ms.Shireen Sethna Baria and Shri P. Venugopal

Counsel for the appellants in
Writ Appeal No.826 of 2007: Shri C.V. Mohan Reddy, Advocate General assisted by Shri J. Sudheer, Special Government Pleader

Counsel for Shri H.A. Rahman
(respondent No.1): Shri S. Satyam Reddy

Counsel for Andhra Pradesh
Industrial Infrastructure
Corporation Limited: Shri K.V. Simhadri

Counsel for A.P. State Wakf Board: Shri S.M. Subhani

::JUDGMENT::

October 26, 2007

Per G.S. Singhvi, CJ

These appeals are directed against order dated 20.9.2007 passed by the learned Single Judge in WPMP No.21993 of 2007 in Writ Petition No.17192 of 2007 whereby he restrained M/s.Emaar Properties (respondent No.9 in the writ petition and appellant in Writ Appeal No.805 of 2007) and Lanco Hills Technology Park Private Limited (respondent No.10 in the writ petition and appellant in Writ Appeal No.796 of 2007) from making any construction in Ac.400-00 land comprised in Survey Nos.203/1 and Ac.108.10 gts. land comprised in Survey No.201 respectively situated at Manikonda Village, Rajendranagar Mandal, Ranga Reddy District.

Background Facts:

Shri H.A. Rahman (respondent No.1 in these appeals), who is member of the Andhra Pradesh Legislative Council and belongs to minority community, filed Writ Petition No.17192 of 2007 for grant of a declaration that the action of respondent Nos.1 to 6 (appellant Nos.1 to 6 in Writ Appeal No.826 of 2007) in allotting different extents of land in Manikonda Village, Rajendranagar Mandal, Ranga Reddy District, which is a wakf property, is illegal. He prayed for quashing the allotments made in favour of respondent Nos.9 to 15 (two of whom i.e. respondent Nos.9 and 10 are appellants in Writ Appeal Nos.796 and 805 of 2007) and to restrain respondent Nos.9 and 10 from raising any construction on the land allotted to them in Survey Nos.203/1 and 201 respectively.

In order to establish his locus to file writ petition under Article 226 of the Constitution of India, respondent No.1 averred that he

worships and performs religious rites at Dargah Hazarat Hussaini Shah Wali (hereinafter referred to as 'the Dargah') and has been offering Chaddar and distributing alms to poor on the occasion of Urs. He further averred that Manikonda Jagir was declared as wakf vide order dated 31.5.1957 passed by Nazim Atiyat in File No.2/56, but the same was not notified as wakf property in Notification dated 9.2.1989 issued under Section 5 (2) of the Wakf Act, 1954 (for short, 'the 1954 Act'). Later on, this omission was rectified by issuing an errata in Gazette Notification No.14, dated 6.4.2006 whereby total extent of Ac.1654.32 gts. land has been shown as wakf land of the Dargah. Respondent No.1 relied on order dated 14.12.1961 passed by the learned Single Judge of this Court in Writ Petition No.666 of 1959 and alleged that even though the State Government does not have any right over the wakf property, it has illegally transferred the land comprised in various survey numbers of Manikonda Village to Andhra Pradesh Industrial Infrastructure Corporation Limited (for short, 'the Corporation') who, in turn, allotted different parcels of land to respondent Nos.9 to 15. In paragraph 9 of his affidavit, respondent No.1 averred that respondent Nos.11 to 15 have already raised construction, but M/s.Emaar Properties and Lanco Hills Technology Parks Private Limited (respondent Nos.9 and 10) have not made any construction. For the sake of reference, that paragraph is reproduced below:

"9. I submit that the respondents 11 to 15 have already made constructions and respondents 9 and 10 have not yet made any constructions in the lands allotted to them and, therefore, the petitioner is seeking direction to the respondents 9 and 10 not to make any constructions in the lands allotted to them by A.P.I.I.C."

Along with the writ petition, respondent No.1 filed WPMP No.21993 of 2007 for issue of a direction to respondent Nos.9 and 10 in the writ petition not to make any construction on the land allotted to them.

In the counter filed on behalf of the Corporation (appellant No.6 in Writ Appeal No.826 of 2007), its Manager (Law), Shri K.Sathaiah denied the petitioner's assertion that the land in question is wakf property ad averred that the same was never recorded as wakf of the Dargah in the revenue record and this is the reason why it was not shown as wakf property in Notification dated 8.2.1989 issued under the 1954 Act. However, Notification dated 6.4.2006 got published by the Chief Executive Officer of the Andhra Pradesh State Wakf Board (for short, 'the Board') without following the procedure prescribed under the Wakf Act, 1995 (for short, 'the 1995 Act'). He then averred that in view of the provisions contained in the Andhra Pradesh (Telangana Area) (Abolition of Jagirs) Regulations, 1358, F (1949) (for short, 'the Regulations') all the jagirs in Telangana region including the jagir of Manikonda Village stood abolished with effect from 15.9.1949 and vested in the State Government and, therefore, the same could not be treated as wakf. Shri Sathaiah further averred that the lands covered by the writ petition were shown as government lands in the revenue records since 1912 and the physical possession thereof remained with the government till it was handed over to the Corporation/Hyderabad Urban Development Authority. Shri Sathaiah has then referred to Writ Petition No.12617 of 2001 filed by Syed Shah Safiullah Hussaini claiming ownership of the land as Inam Mashuruthal Kidmath lands attached to the Dargah and order dated

11.7.2001 passed by the learned Single Judge in WVMP No.1747 of 2001 to show that the land measuring Ac.1297.13 gts. is government land and the remaining land measuring Ac.75.11 gts. claimed by Syed Shah Safiullah Hussaini is patta land of private individuals. According to Shri Sathaiah, Ac.20.32 gts. land comprised in Survey No.203/3 and 4, 205, 206, 208, 209 and 210/2 of Manikonda Village was acquired under the Land Acquisition Act, 1894 vide awards dated 31.10.2005, 31.12.2001, 21.1.2006 and 31.12.2001 for development of the projects by the Corporation and physical possession was handed over to the Corporation; that land comprised in Survey Nos.203/1, 210/1 and 211/1 measuring Ac.915.30 gts. of Manikonda Village has been classified as Kancha Sarkari, out of which, Ac.250-00 land was handed over by revenue authorities to Indian School of Business pursuant to G.O.Ms.No.410, Revenue (Assn.V) Department, dated 21.5.1999 and total area measuring Ac.734.03 gts. comprised in Survey Nos.203/1, 203/P, 201, 210/1, 210/P, 211/1 and 211/P was handed over to the Corporation on various dates between 28.10.2000 and 17.2.2005 for development of projects. Thereafter, different parcels of land were allotted to respondent Nos.9 to 15 for their projects. For better appreciation of the stand taken by the Corporation, paragraphs 6 to 12 of the affidavit of Shri K. Sathaiah are reproduced below:

"6. It is submitted that reliance placed upon the Gazette notification published in the Gazette dated 6.4.2006 of the Chief Executive Officer to contend the lands in the WP are Wakf properties is misplaced and the Notification itself is not in accordance with the provisions of the Wakf Act, 1995. The earlier Notification published in the A.P. Gazette dated 9.2.1989 did not cover the lands in question. The earlier notification was got published under the Wakf Act, 1954, which was repealed and replaced by

Wakf Act, 1995 which came into force w.e.f. 22.11.1995. As such, the provisions of the Wakf Act, 1995 apply to the 2nd notification, but the 2nd notification was got published without following the procedure under the Act, 1995. It is significant to note that the 1st notification published in the Gazette dated 9.2.1989 pertains to the lands in Dargah Hussain Shah Wali Village whereas the subsequent and the 2nd notification in the A.P. Gazette dated 6.4.2006 captioned as Addendum pertains to the lands of Manikonda Village. In any case, Jagir land could not have been legally a wakf. Further, the Sajjada Nasheen of Dargah Hussaini Shahwali Village previously filed W.P.No.12617/2001 in this Hon'ble Court with a similar prayer in respect of the same land. Subsequently, the said writ petition was got withdrawn on 18.12.2006. Further, the period of 3 months prescribed for making application for registration of wakf u/s.36 (8) of Wakf Act, 1995 expired long back apart from the fact that the vital details like the name of the Wakif, copy of Wakfnama, competency of the Wakif to create Wakf, the date on which the Wakf was created etc. were not placed on record by the petitioner in the present WP.

7. For better appreciation of the case, the factual conspectus as followed is submitted. Obviously, Manikonda is a jagir village. All the jagirs in Telangana region of the State were abolished on 15.9.1949. The then Government, after abolition of Jagirs enacted the Hyderabad (Abolition of Jagirs) Regulations, 1358 Fasli to proceed with Jagir lands. After abolition of the Jagirs, the title of the lands passed in favour of the Government. What all the Jagirdar or the Sarf-e-Khas could have claimed, thereafter was the commutation amount which became payable on account of the abolition of Jagirs under either the Jagir (Abolition) Regulation, 1358 Fasli or the Jagir Commutation Regulation, 1359 Fasli. Commutation amounts would be payable to the Jagirdar, if in terms of muntakhab, he had the title in respect of the Jagir land. Jagirdars have no right to alienate any land after abolition of Jagirs under A.P. (TA) (Abolition of Jagirs) Regulations, 1358 Fasli (1949) as all Jagir lands stand vest in Government. In Raja Rameswara Rao v. Raja Govinda Rao (AIR 1961 SC 1442) the Hon'ble Supreme Court has observed:

> The first incidence of Jagir is that it must be taken prima facie as an estate granted for life … … The State has got a right to resume the grant at pleasure and if that is so, it cannot be said that the Jagirs

granted in Hyderabad were permanent or hereditary though it may be that a son was allowed to succeed to the father in the normal course. The State however had always the right to resume the grant at pleasure.

In compliance with the common orders dated 21.6.1995 of this Hon'ble Court passed in W.P.No.435 and 1052 of 1988 and W.P.No.17305 of 1987, the Joint Collector, R.R. District enquired into the applications of the writ petitioners for assignment of lands to them and by his orders dated 29.1.1997 has categorically concluded as follows:

The settlement records viz. the Classer Register, Akarbandi and Sethwar have been verified. The Classer Register prepared at the time of initial survey in 1319 Fasli i.e. 1910 A.D. have been verified. According to the Classer Register, the lands in Survey No.203, 210, 211 and 212 are shown as Poramboke i.e. Government lands. The Akarbandi has been verified. The entries in respect of the suit lands (Survey Nos.203, 210, 211 and 212) also reveal that the lands are recorded as poramboke. The sethwar of Manikonda village was prepared in the year 1322 Fasli i.e. 1912 A.D. According to the Sethwar, the lands in:

Survey Nos.	Extent Acs. gts.
203	207.35
210	429.14
211	288.30
212	124.31

cue recorded as Poramboke (Government land). The records referred to above were prepared prior to abolition of Jagirs i.e. 15.9.1948. The Government was the absolute owner of the suit lands even during the regime of Jagirdars. … … The Jagirdar was only entitled to enjoy usufructs. The suit lands during the Jagir tenure itself were vested with Government and after the abolition of Jagirs also they continued to be vested with the State Government. …

8. It is submitted that Syed Shah Safiullah Hussaini son of late Syed Shah Akbar Hussaini, Sajjada Nasheen r/o.Darga Hussaini Shahwali Village filed W.P.No.12617 of 2001 against (1) Secretary to Government, Revenue Department, (2) Chief Commissioner, Land Administration, (3)

District Collector, R.R. District (4) Mandal Revenue Officer, Rajendranagar Mandal (5) Managing Director, APIIC (6) MD, Infosys for correction of revenue records in respect of the lands in Survey No.185 to 265 in Manikonda Jagir Village in his favour claiming ownership of the lands as Inam Mashuruthal Kidmath lands attached to Dargah Hazarath Hussain Shahwali. Initially, this Hon'ble Court granted interim orders on 26.6.2001 in W.P.M.P.No.15708 of 2001 in W.P.No.12617 of 2001. Subsequently on contest, the interim order was vacated on 11.7.2001 in W.V.M.P.No.1747 of 2001. The said W.P. was filed on bogus letter dated 18.5.2001 purported to have been issued by CCCLA. Later on, the W.P. was got withdrawn on 18.12.2006. While vacating the interim orders dated 26.6.2001 on 11.7.2001m, this Hon'ble Court has accepted the fact that as per the Sethwar of 1322 Fasli corresponding to 1913 A.C.:

i. it was found that survey Nos.185 to 192, 194 to 196 and 247 to 251 admeasuring Acres 40.32 gts. are classified as Maktha lands and stand in the name of the father of the petitioner.

ii. That land in survey No.59 to 65 admeasuring Acres 3.13 gts. classified as mafi inam, stand in the name of the father of the petitioner.

iii. Land in Survey Nos.193, 199, 201, 203, 207, 210, 211, 212, 21, 229, 231, 241, 243, 246, 261, 263 and 265 admeasuring Acres 1,297.13 gts. are Government lands;

iv. and the remaining lands admeasuring Acres 75.11 gts. claimed by the petitioner are patta lands stand in the name of different persons. The aggregate extent of land is Acres 1,416.29 gts.

9. It is further submitted that on the requisition of the Corporation, land to total extent of Acres 20-32 gts. in Survey Nos.203/3 & 4, 204, 205, 206, 208, 209 & 210/2 of Manikonda Village was acquired under L.A. vide Awards dated 31.10.2005, 31.12.2001, 21.1.2006 and 31.12.2001 of the Land Acquisition Officer-cum-Special Dy. Collector (LA), Industries, Hyderabad for utilizing the same for the public purpose of development of projects by APIIC. The physical possession of the lands so acquired was taken under L.A. Act on 16.6.2005, 24.4.2005, 2.7.202, 30.1.2006 and 2.7.2002 and the lands in turn were handed over to the Corporation. In respect of the lands acquired through the Awards dated 31.12.2001 for an extent of Acs.6-23 gts. and Acs. 3-09 gts. in Sy.Nos.204, 205, 206, 208 and 209 of Manikonda Village, WPs. are pending before this Hon'ble Court

challenging LA proceedings alleging that procedure under the LA Act was not followed.

10. It is submitted that the following lands in Manikonda Jagir Village are classified as Kancha Sarkari.

Survey Nos.	**Extent Acs. Gts.**
203/1	201.35
210/1	425.14
211/1	288.30

11. Out of the above Government lands, an extent of Acres 250.00 in Sy.No.203 and 210 was handed over by the Revenue Authorities to Indian School of Business following orders in G.O.Ms.No.410, Revenue (Assn.V) Department, dated 21.5.199. Further extents of Government lands were handed over to the Corporation as follows for development of Projects.

Survey Nos.	**Extent Acs. Gts.**	**Date of handing over possession**
203/1	72.00	28.10.2000
203/1	49.01	24.04.2001
203/P	28.14	27.10.2001
207	01.12	02.07.2002
201/P	68-05	26.3.2004
201/P	40-05	28.10.2004
210/1	198.02	28.10.2000
210/P	29.22	27.10.2000
211/1	213.21	28.10.2000
211/P	34.01	17.02.2005
Total:	734.03	

12. It is submitted that the Corporation allotted Government lands in Manikonda Village to the following companies/respondents No.9 to 15 herein for development of their projects.

Sy.No.	**Extent Acs. Gts.**

i) Emaar Properties	203/1	400.00
ii) Microsoft		54.79
iii) Infosys		50.00
iv) Wipro		30.00
v) VJIL		5.00
vi) Polaris		7.89
vii) Lanco		108.10”

In the counter-affidavit filed on behalf of the Board, its Chief Executive Officer Shri S. Madar Saheb has supported the cause of the petitioner by stating that the total area of Manikonda Jagir Village i.e. Ac.1997.18 gts. is service Inam land and the same has always been treated as wakf. He has averred that errata, which was published in Andhra Pradesh Gazette dated 6.4.2006, is final and conclusive about the character of the property in question as wakf property and no alienation can be made without prior sanction of the Board. Paragraph 11 of the affidavit of Shri S. Madar Saheb on which strong reliance was placed by Shri V.R. Manohar, Senior Counsel appearing for Lanco Hills Technology Park Limited, reads thus:

“11. I submit that once the property is notified u/s.5 (2) of the Wakf Act, 1995 based on the report submitted by the Commissioner of Wakfs U/s.4 (3) of the Wakf Act, 1995, the said notification is final and conclusive U/s.6 (4) of the Act, unless and until it is modified in pursuance of the decision or the tribunal U/s.6 (1) of the Wakf Act, 1995. Therefore, once the property is notified only almighty God is the owner of the said property under notification. The Board, which is constituted u/s.14 of the Wakf Act, 1995 is having statutory authority to manage, control and administer the said property on behalf of the God as really empowered U/s.32 of the Wakf Act, 1995. Therefore, any alienation of the said notified property, without sanction of the Board is null and void and the same is not binding on the

Board as contemplated u/s.51 of the Wakf Act, 1995 in the present case, the Government of Andhra Pradesh without there being any prior notice or sanction by the Board, allege to have been allotted the valuable lands of the subject institution in favour of resp. Nos.9 to 15 through 6th respondent. If at all, the Government desires to utilize the property belongs to the Wakf Institution, that they should take prior sanction from Board. Any Proceedings for purchase of any Wakf Land including the land of the subject institution should be by paying the requisite sale consideration. Therefore, the Board alone is entitled the amount which was collected by the Government from the 3rd parties towards sale consideration of lands which was already allotted to respondent No.6 and respondent Nos.9 to 15. As an interim measure, keeping in view of the interest of the property belong to the Wakf institution, this Hon'ble Court may direct the Government to transfer the said amount into the account of this respondent."

Shri Vijay Memon, General Manager of Emaar Hills Township Private Limited and Boulder Hills Leisure Private Limited has filed affidavit on behalf of respondent No.9 (the appellant in Writ Appeal No.805 of 2007). He has averred that in furtherance of notice issued by the Corporation inviting 'Expression of Interest' for development of projects consisting of International Standard Convention Centre, Star Hotels, Golf Course and Villas to meet and cater the potential tourist traffic in Hyderabad, which is being considered as a tourist-cum-business destination for international and domestic travelers, various parties gave their offers; that after considering the offers, M/s.Emaar Properties PJSC, Dubai was selected; that Memorandum of Understanding was signed between the Corporation and M/s.Emaar Properties PJSC, Dubai and, on 19.8.2003, a collaboration agreement was signed between the parties, which was subsequently modified by supplementary agreement dated 19.4.2005 for setting up

an integrated project. Later on, the integrated project was restructured to have three Special Purpose Vehicles for implementation of three different components i.e. Emaar Hills Township Private Limited, Boulder Hills Leisure Private Limited and Cyberated Convention Center Private Limited. These companies have been registered with the Registrar of Companies. In paragraphs J, K, L and M of his affidavit, Shri Vijay Memon has given the status of different projects and the expenditure incurred by respondent No.9. These paragraphs read as under:

"J) The APIIC on 29.11.2005 handed over the lands to EHTPL and BHLPL and EHTPL and BHLPL have been in possession of the land. It is stated that a part of the projects of BHLPL are on lease to an extent of 235 acres and at present the Golf Course is rearing completion on the leased land. It is relevant to point out that contracts for Golf Course have already been awarded to L & T ECC Division for a value of about Rs. 90 crores and L & T has imported expensive equipment for the Golf Course. It may be noted that EHTPL and BHLPL have already spent and are expending huge amounts for a dedicated sewerage treatment plant for the Township and Golf Course to ensure that treated water is recycled for irrigation of the Golf Course. BHLPL has further purchased 17 acres of free hold land for the Boutique Hotel. The Club House constitution is completed after expending huge amounts and the project undertaken by EHTPL, ie., model homes, sales centre are completed as also the infrastructure work for the township, for which contract a contract awarded in May 2006 to Shapoorji Pallonji at huge cost. EHTPL has purchased land admeasuring Ac. 258.36 guntas at a cost of about Rs. 75 crores for the Township Project. The total expenditure incurred on the Townhip is more than Rs. 82 crores, which is being financed through debt and equity.

K) This respondent has already undertaken and implemented the Integrated Project as a whole and in the event if the lands, for any reason whatsoever, not being provided to the SPVs the entire Integrated Project will surer huge financial losses running into more than Rs.400 crores and the project will not be financially viable for APIIC and Emaar Properties

PJSC. Further, it will result in wrong signals being sent to potential foreign institutional investors coming into the State including Emaar Properties, PJSC, Dubai, which has publicly start its intention of investing about $ 5 billion in India in the next few years. It is respectfully submitted that in the event of the Integrated Project being jeopardized by a few individuals, the entire interest of State Andhra Pradesh to create world-class business cum leisure destination as part of its development activities will come to a halt.

L) It is further submitted that stalling any part of the Integrated Project or obstruction of any sort or in any manner to the development of the Integrated Project would lead to huge financial losses to EHTPL and BHLPL as large investments have already been made into the development of the Integrated Project. In that event of delay caused by litigation, there will be huge costs overrun which will have an adverse impart on the financial viability of the Integrated Project and consequent loss of revenue to the State. That in keeping with the obligation under the Collaboration Agreement, CCCPL has already completed the construction of the Hyderabad International Convention Centre (HICCC) which is the largest Convention Centre in South Asia providing seating arrangements for around 4000 to 5000 seats in the plenary hall with additional break-away rooms along with 300 keys Business Hotel being constructed along with this project. The project cost of the Convention Centre is about Rs. 174 crores and project cost of the Business Hotel's about Rs. 122 crores therefore, the total cost being Rs. 296 crores. The total project cost of Convention Centre and Business Hotel is financed through equity to the extent of Rs. 148 crores and through loans to the extent of Rs. 148 crores from Financial Institutions. It is further most respectfully submitted that upto the end of January, 2006, this respondent has already raised Rs. 235 crores in total for the Convention Centre and Hotel Project, through Equity and Unsecured loans to the extent of Rs. 155 Crores, through Rupee Loan from IDFC to an extent of Rs. 40 crores. The said Convention Centre is offering state of art features and this respondent is herewith filing photographs of the Convention Centre and Business Hotel.

M) It is relevant to point out that the International Convention Centre was the venue of the Parvasi Bharatiya Divas Meet held in January 2006 and the 39th Annual General Meeting of the Board of Governors of the Asian Development Bank and Finance Ministers of Asian. Further, various

international events are being hosted and lined up for conferences conventions for which bookings have taken place for the said Convention Centre. It is stated that the Integrated Project has already providing over 2500 jobs for skilled and unskilled employees and has generated employment in the State having created numerous job opportunities. This will generate further large-scale employment and help to eradicate the problems of unemployment in the State once both hotel and Township are operational.

In a separate counter filed on behalf of respondent No.10 – M/s.Lanco Hills Technology Park Private Limited (appellant in Writ Appeal No.796 of 2007), its Chief Executive Officer and Director Shri Pochender Shenigarapu has raised preliminary objections to the maintainability of the writ petition by asserting that the petitioner does not have the locus to question the allotment of land to the private respondents in Manikonda Village and that disputed questions of fact cannot be adjudicated under Article 226 of the Constitution of India. Another objection raised by the deponent is that statutory alternative remedy is available to the petitioner by filing petition under Section 83 of the 1995 Act. The deponent has further averred that with a view to implement its decision to promote I.T. industry, the State Government formulated Information Communication Technology Policy, 2005 – 2010; that the Corporation was designated as Nodal Agency and was entrusted with government land for execution of development plans; that in furtherance of notification issued by the Corporation, respondent No.10 gave its offer; that the Corporation accepted the said offer; that thereafter, development agreement dated 4.11.2006 was entered into between the Corporation and respondent No.10 for development of project which consists of integrated world-class I.T. Parks including I.T. SEZ and modern spaces for 75,000

professionals. In paragraphs 5 and 7 of his affidavit, Shri Pochender Shenigarapu has made the following averments:

"5. I state that in all this respondent so far incurred an amount of Rs.456.48 crores on account of cost of land, land development & construction cost, architects & consultancy fees, impact fees, interest and etc. I state that in view of the tight time bound project schedule this respondent had deployed Rs.537 crores so far and had made arrangements for financing of the project to the extent of Rs.5500 crores and various contracts have been entered into with various agencies providing for survey design, architectural, construction and supply construction material. As of now, more than 1000 people are working on the project and on account of the same on day to day basis this respondent is incurring huge expenditure of Rs.5500 crores.

7. I state that this respondent being part of a reputed and well-known business organisation engaged in construction and development of infrastructure projects including power projects under bona fide belief and trust had responded to the invitation of the Government of Andhra Pradesh/APIIC to participate in the development of the project at Manikonda. As per the material provided and assurances given by the State and State Agencies that the land of Ac.108.10 in Sy.No.201 of Manikonda Village, Rajendranagar Mandal, Ranga Reddy District, is Government land and free of encumbrances this respondent had committed with an investment of Rs.5500 crores. In the event of the appropriate authority/competent court holding the property is that of the Wakf the consideration money can always be madeover by the State to the benefit of the Wakf and no prejudice whatsoever would be caused to the Wakf Institution. On the other hand, if this respondent is injuncted from proceeding with the construction and development activity, in the event of the writ petition being dismissed, the stoppage of development and construction activity would result in huge financial loss to this respondent. It is submitted that the project that is being undertaken by this respondent being one of the prestigious projects that is being promoted by the State of Andhra Pradesh the stoppage of work at this stage would not be in the interest of public exchequer besides causing enormous loss to this respondent and the revenue loss to the State."

Order of the learned Single Judge:

By the order under challenge, the learned Single Judge, after taking cognizance of the pleadings of the parties, order dated 31.5.1957 passed by Nazim, Atiyat, Muntaqab No.98, dated 27.11.1958, order dated 14.12.1961 passed by the learned Single Judge in Writ Petition No.666 of 1959, judgments of the Supreme Court in **Sayyed Ali v. Andhra Pradesh Wakf Board**[1], **R. Doraswamy Reddy v. Board of Wakf**[2], and of this Court in **B. Goura Reddy (deceased by L.Rs.) and others v. Government of Andhra Pradesh and others**[3], the provisions of the 1954 and 1995 Acts, A.P. Gazettes dated 8.2.1989 and 6.4.2006 and held that it is not open for the government to dispute that the land measuring Ac.1654.32 gts. does not belong to the Dargah; that the government is bound by the order of Atiyat Court, which was confirmed by the Board of Revenue in File No.U/4498/58AA, dated 14.11.1958; that once the property has been notified under Section 5 (2) as wakf property, the government cannot be treated as its owner and that the private respondents cannot raise any construction unless the land is purchased after following the procedure prescribed under the Wakf Act and the Rules made thereunder by way of public auction. The learned Single Judge further held that the District Collector does not have the jurisdiction to overlook the errata notification and rely on order dated 29.5.1956 passed by the then Chief Minister of the State in Case No.545 and treat the land in question as government property. Accordingly, he restrained respondent Nos.9 and 10 in the writ petition from making construction over the land allotted to them in Survey Nos.203/1 and 201 respectively of Manikonda Village. For

the sake of reference, paragraphs 34 to 36 of the order passed by the learned Single Judge are extracted below:

"34. The extent of the land Ac.1654.32 guntas as shown in Errata notification tallies with the order of Nazim-E-Atiyat Court in File No.2/56, dated 31.5.1957, confirmed by the Board of Revenue and also by this Court in W.P.No.666 of 1959. The survey numbers of Manikonda Jagir village, which was a conditional grant in favour of Dargah admeasuring Ac.1654.32 guntas as per the conditional grant and after survey, the Survey Commissioner Wakf only identified the relevant survey numbers of the total extent as Ac.1654.32 guntas and published by way of Errata amending the original notification. Admittedly, in the original notification, the Col.Nos.10, 11 and 12, the survey numbers and total extent was not mentioned and in the Addendum, the survey numbers and total extent has been mentioned. Therefore, I am of the prima facie opinion that it is not open for the government to dispute that the said property does not belong to Dargah. The government is bound by its own orders, confirming the orders of Atiyat Court, by the Board of Revenue in File No.U/4498/58 AA, dated 14-11-1958 and also as confirmed by this Court.

35. As per the scheme of the Wakf Act and as per the judgment of the Apex Court in AIR 1998 Supreme Court, page No.972, it cannot be said that the said properties are not wakf properties and that they are the government properties. Once the property has been notified under Section 5 (2) of the Wakf Act based on the report submitted by the Survey Commissioner of Wakf under Section 4 (3) of the Wakf Act, the notification is final and conclusive under Section 6 (4) of the Act unless it is modified by the Wakf Tribunal under Section 6 (1) of the Act. Therefore, I am of the prima facie opinion that the said property belongs to Almighty God and the God alone is the owner of the said property, but not the Government. If that be so, even the respondents are going to construct a Golden City in the said property of the Wakf, it is not permissible for them unless the said lands are purchased after following the due procedure prescribed under the said lands are purchased after following the due procedure prescribed under the Wakf Act and the Rules made thereunder by way of a public auction. As the similar contentions with regard to the illegality of the survey and notification, against the order of the learned Single Judge, the aforesaid writ appeals have been filed and the Division Bench of this Court directed

the respondents therein not to make any constructions, I am of the opinion that similar orders are required to be passed in this writ petition also.

36. It is not open for the District Collector to conduct enquiry either with regard to survey report dated 30.9.2005 submitted by the Survey Commissioner/Assistant Commissioner of Wakf which is the basis for the Errata notification, amending the earlier notification or it is open for him to take any action against the concerned officials connected with the survey report. Therefore, I am of the opinion that the letter addressed by the District Collector, Rangareddy District, dated
2-5-2007 and the D.O. letter dated 13-9-2007, stating that the then Hon'ble Chief Minister of the State in Case No.545, dated 29-5-1956 handed over Manikonda Vilalge to the Government and that the publication of Errata to the notification published in Andhra Pradesh Gazette No.6-A dated 9.2.1989 in Andhra Pradesh Gazette No.14, dated 6.4.2006 is erroneous and that the second report is prima facie bogus and forged one, is uncalled for and misconceived. The District Collector has to function to aid the Wakf Board as per the directions of the Chief Executive Officer, but he has no independent power or authority under the provisions of the Wakf Act to nully the earlier orders, notifications or to act against adverse interest of the wakf properties. It is not open for the District Collector to comment about the Gazette Notification and Errata Notification. The said letters have been placed before this Court to cover up his lapses and erroneous action with a view to nullify the aforesaid earlier orders and Gazette notifications. It appears that he has no respect to the earlier orders of the Board of Revenue of the Government, High Court notifications made under the Wakf Act and even to the DO letter of the Principal Secretary to the Government and the Minority Welfare Department dated 4.5.2007.

Having regard to the facts and circumstances of the case and in view of the Division Bench orders this Court dated 9.2.2002 in W.A.Nos.729, 745, 778, 715, 625 and 885 of 2002, I am of the opinion that it is just and proper to grant interim direction to protect the wakf properties.

Accordingly, respondents 9 and 10 are directed not to make any constructions in the said notified lands in an extent of Ac.400-00 guntas in Sy.No.203/1 and Ac.108.10 guntas in Sy.No.201 respectively situated at Manikonda Village, Rajendranagar Mandal, Ranga Reddy District pending disposal of the writ petition.

Against the similar contentions, writ appeals are pending before the Division Bench, therefore, I am of the opinion that it is just and proper to post this writ petition along with Writ Appeal Nos.729, 745, 778, 715, 625 and 885 of 2002 before the Division Bench after obtaining orders of the Hon'ble the Chief Justice."

The Arguments:

Shri V.R. Manohar, Senior Counsel appearing for M/s.Lanco Hills Technology Park Private Limited argued that the order impugned in these appeals is liable to be set aside because, while restraining respondent Nos.9 and 10 in the writ petition from making construction over the land comprised in Survey Nos.203/1 and 201 respectively, the learned Single Judge altogether overlooked the three important factors i.e. the balance of convenience, irreparable injury and public interest. Shri Manohar invited the Court's attention to para 11 of the affidavit of Shri S. Madar Saheb, Chief Executive Officer of the Board and submitted that if, at the time of final adjudication, the Court comes to the conclusion that the land allotted to the private respondents is wakf property, then the State Government and the Corporation can be directed to compensate the Board by allotting alternative land or depositing the price recovered from respondent Nos.9 to 15.

Dr.A.M. Singhvi, Senior Counsel appearing for M/s.Emaar Properties joined Shri V.R. Manohar and argued that the learned Single Judge committed a jurisdictional error by granting injunction only on the premise that the writ petitioner has been able to make out a prima facie case. Dr.Singhvi referred to the averments contained in the counter-affidavit filed on behalf of the Corporation to show that the land in question has throughout been treated as government land

and argued that in the absence of any objection by the Board to the allotment of land to the private respondents and failure of the writ petitioner to explain the long delay should have been treated by the learned Single Judge sufficient for declining interim relief. He emphasized that respondent No.9 in the writ petition has already spent over 400 crores of rupees in constructing the Convention Centre and Club House, which are almost complete, and awarded contract for Golf Course to L & T, ECC Division for a value of
90 crores and the latter has already imported expensive equipments and argued that the learned Single Judge ought not to have passed the restraint order without even considering the averments contained in paragraphs J to M of the affidavit of
Shri Vijay Memon of M/s.Emaar Properties.

Shri C.V. Mohan Reddy, learned Advocate General invited the Court's attention to Sections 4 and 5 of the 1995 Act and argued that Notification dated 6.4.2006 got published by Chief Executive Officer of the Board is liable to be ignored because the same was not preceded by an enquiry envisaged under Section 4 (3) and publication of the list of Wakfs under Section 5 of the 1995 Act. He then referred to G.O.Ms.No.7, dated 3.3.2001 issued by the State Government under Section 4 (6) of the 1995 Act whereby the Survey Commissioner of Wakfs was authorized to conduct second survey of wakf properties in the State and to submit report within six months, letter dated 2.9.2005 sent by Chief Executive Officer of the Board to the Survey Commissioner of Wakfs whereby the concerned officer was asked to submit second survey report in respect of the Dargah, letter dated 30.9.2005 written by the Survey Commissioner of Wakfs

to the Chief Executive Officer of the Board and pointed out that entries contained in Column No.11 of the proforma attached to letter dated 30.9.2005 were interpolated to show Inam lands at Manikonda Jagir Village, Sherilingampalli Mandal, Ranga Reddy District (total extent Ac.1654.32 gts.) in different survey numbers as wakf property. To substantiate this allegation, the learned Advocate General referred to letter dated 13.9.2007 sent by District Collector along with the statement of the then Mandal Revenue Officer and Deputy Collector, Shri A. Rajeshwar Reddy, who denied his signatures on letter dated 30.9.2005 of Assistant Commissioner of Wakfs, Governemnt of Andhra Pradesh. Learned Advocate General emphasized that Notification dated 6.4.2006 cannot be treated as conclusive of the nature of property specified therein because, in terms of Clause 16 of the Regulations, the entire jagir of Manikonda Village vested in the State Government. The learned Advocate General pointed out that order dated 31.5.1957 passed by Nazim, Atiyat was confined to the enquiry of the mash, which is claimed to have been granted for the service of Dargah and submitted that the same cannot be treated as an adjudication regarding the nature of the property. He submitted that once the jagir stood abolished and vested in the government, the same cannot be treated as wakf, as defined in Section 3 (l) of the 1954 Act and 3 (r) of the 1995 Act. Learned Advocate General argued that orders dated 31.5.1957 and 24.9.1958 passed by Nazim Atiyat and order dated 14.12.1961 passed by the learned Single Judge in Writ Petition No.666 of 1959 are not binding on the State Government because it was not party to any of those proceedings moreso because the writ petition filed by

Syed Yousuf Hussaini and six others was essentially directed against order dated 14.11.1958 passed by the Board of Revenue declining to quash the orders of Nazim Atiyat. In the end, the learned Advocate General submitted that if the writ petition filed by respondent No.1 is ultimately allowed, the Court may direct the government to allot equal extent of land to the Board and argued that there is no warrant for stultifying the projects being executed by respondent Nos.9 and 10, who have already spent more than 1000 crores of rupees.

Shri S. Satyam Reddy, learned counsel for respondent No.1 extensively referred to order dated 31.5.1957 passed by Nazim, Atiyat in File No.2/56 and argued that the learned Single Judge rightly treated Ac.1654.18 gts. of land of Manikonda Jagir as wakf. Shri Reddy argued that the finding of fact recorded by Nazim, Atiyat has been approved by the learned Single Judge in Writ Petition No.666 of 1959 and, therefore, it is not open to the State Government and its agencies to question the status of the land as wakf property. Learned counsel relied on the judgment of the Supreme Court in **Sayeed Ali v. A.P. Wakf Board** (supra) and argued that once the land of Manikonda Jagir has been declared as wakf, its character cannot be altered by anyone. He then submitted that in view of Notification dated 13.3.2006 issued by the Chief Security Officer of the Board, which was published in A.P. Gazette dated 6.4.2006, it is no longer open for anyone including the State Government to question the correctness of the entries contained therein. Learned counsel submitted that if respondent Nos.9 and 10 in the writ petition are allowed to raise construction, the character of the wakf property

will be changed, which is legally impermissible. Shri Satyam Reddy relied on the provisions contained in Chapter IV of the 1954 Act and Section 43 of the 1995 Act and argued that even in the absence of formal registration of the wakf under either of the enactments, the same will be deemed to be registered as a wakf by virtue of Section 30 of the 1954 Act. Shri Reddy also relied on order dated 18.9.2006 passed by the learned Single Judge in Writ Petition No.18266 of 2006 – Smt. P. Atchamma v. Government of Andhra Pradesh and others and argued that the entries contained in Notification dated 13.3.2006 cannot be questioned by the respondents and the only remedy available to them is to file a petition under Section 83 of the 1995 Act.

Shri S.M. Subhani, learned counsel for the Board supported Shri S. Satyam Reddy and argued that the learned Single Judge did not commit any error by restraining respondent Nos.9 and 10 in the writ petition from making construction over the land comprised in Survey Nos.203/1 and 201 respectively of Manikonda Village because the State Government does not have the power, jurisdiction or authority to alienate the wakf property. Shri Subhani relied on Section 51 of the 1995 Act and argued that the transfer of the wakf property to the private respondents is void because all the transactions were done without the sanction of the Board. Learned counsel submitted that the Board has been constantly protesting against the transfer of wakf land, but the State Government has abused its power and arbitrarily allotted land to the private respondents at throw away prices. In reply to the Court's query, Shri Subhani submitted that the failure of the Board to question the

allotment of land to respondent Nos.11 to 15 and to take steps to prevent them from raising construction cannot operate as estoppel against respondent No.1 from seeking protection of the wakf property.

Shri M.A. Bari, who is representing some of the parties in other cases to which reference has been made in paragraph 36 of the order under challenge, submitted that the court should not allow the State Government to fritter away wakf property by alienating the same to private respondents in violation of Section 51 of the 1995 Act. He submitted that the Board has maintained silence all these years because there is no elected body and it is being controlled by the Special Officer appointed by the government.

We have given serious thought to the entire matter. Before dealing with the arguments of the learned counsel, we consider it proper to mention that one Syed Shah Safiullah Hussaini, who was respondent No.1 in Writ Petition No.666 of 1959, filed Writ Petition No.12617 of 2001 for issue of a mandamus to the respondents in that case i.e. Secretary to Government, Revenue Department, the Chief Commissioner, Land Administration, District Collector, Ranga Reddy District, Mandal Revenue Officer, Rajendranagar Mandal, Ranga Reddy District, Managing Director, APIIC and Managing Director, Infosys Technologies Limited to implement orders dated 30.3.2001 and 21.4.2001 issued by the State Government and Chief Commissioner of Land Administration respectively by claiming that in terms of Muntaqub No.98, dated 28.11.1958, he is Sajjada Nasheen of the Dargah; that lands bearing Survey Nos.185 to 265 situated at Manikonda Jagir Village are Mushrutul Kidmath to meet the

maintenance and expenses of the Dargah as well as religious functions including wood-u-gul; that after the death of his father, the lands were under supervision of Sarfakhas since 1343 F to 1348 F and afterwards under the control of Court of Wards and were released vide Notification dated 29.5.1956 in his favour; that he represented to District Collector, Ranga Reddy to correct revenue records; and that during the pendency of his application, M/s.Infosys Technologies Limited raised unauthorised and illegal construction in Survey No.203, 210 and 211 of Manikonda Jagir Village. He also applied for interim relief. By an order dated 26.6.2001 passed in WPMP No.15708 of 2001, this Court granted ad-interim relief. On notice, the official respondents filed WVMP No.1747 of 2001, which was allowed by the learned Single Judge on 11.2.2001 by recording the following order:

"The whole cause of action in the instant writ petition is based upon the letter dated 18.5.2001 purported to have been written by the Chief Commissioner, Land Administration directing the District Collector, Ranga Reddy to maintain status quo. The subsequent clarification of the Chief Commissioner of Land Administration vide C.C.L.A. Ref.No.ROR/129/2001 dt.5.7.2001 is clear in this context. It is clarified that the said letter dated 18.5.2001 is a bogus one issued by the Senior Assistant Sri V. Nagaveeresam without any authority of the Chief Commissioner. The said person is stated to have been kept under suspension. Thus, it is clear that there is no order as such passed by the Chief Commissioner, Land Administration.

Be that as it may, it is stated in the counter affidavit that as per the record i.e. Setwar of 1322 Fasli corresponding to 1913, it is found that the land bearing Survey No.185 to 192, 194 to 196 and 247 to 251 admeasuring Ac.40-32 gts. are classified as Maktha lands situated at Manikonda Jagir Village stand in the name of the father of the petitioner. Further, land bearing Sy.No.59 and 65 admeasuring Ac.3-13 gts. classified as mafi inam stand in the name of the father of the petitioner. It is further clarified that the

land bearing Sy.Nos.193, 199, 201, 203, 207, 210, 211, 212, 215, 229, 231, 241, 243, 246, 261, 263 and 265 admeasuring Ac.1297.13 gts. are government lands and the remaining lands admeasuring Ac.75-11 gts. claimed by the petitioner are patta lands stand in the name of different persons.

The fact remains that the land allotted to respondent No.5 as well as respondent No.6 do not form part of the land that stand in the name of the petitioner's father. In the circumstances, the interim order earlier granted by this court shall stand vacated.

Expedite hearing of the writ petition.

Learned Government Pleader for Revenue, however, submits that the government is in no way interfering with the lands that stand in the name of the father of the petitioner."

Subsequently, Writ Petition No.12617 of 2001 was dismissed as withdrawn.

It is also appropriate to mention that D. Venkata Krishna Rao and nine others have filed Writ Petition No.6148 of 2007 for quashing Gazette Notification dated 6.4.2006 on the ground that the property specified therein is not wakf property. By an interim order dated 1.5.2007 passed in WPMP No.7860 of 2007, the learned Single Judge suspended the operation of Notification dated 6.4.2006 insofar as it relates to the lands claimed by the writ petitioners in Survey Nos.187 to 190 and 194 of Manikonda Village subject to the condition that they i.e. the writ petitioners shall not alienate the land to third parties.

The stage is now set for considering whether the injunction granted by the learned Single Judge is legally sustainable.

The parameters for exercise of the High Court's power to pass an order of injunction or stay in a petition filed under Article 226 of the Constitution of India are well-settled. The Court must feel convinced

that the petitioner has been able to make out a strong prima facie case; that the balance of convenience is in favour of grant of interim order; that in the event of non-grant of interim relief, the petitioner will suffer irreparable injury and that public interest warrants exercise of discretion by the Court in favour of passing an interim order. The consideration of these factors must be reflected in the order of injunction or stay, moreso when such an order is mandatory in character. The admission of the writ petition or issue of notice to the opposite party is only indicative of the Court's willingness to examine on merits the issue raised by the petitioner in regard to the violation of his legal or constitutional rights or arbitrary or mala fide exercise of power by the State or its instrumentalities/agencies. In other words, admission of the writ petition can be treated as indicative of the existence of prima facie case in favour of the petitioner. However, that, by itself, is not sufficient for passing an order of stay or interim injunction ex debito justitiae. Whenever a prayer for interim injunction or stay is made, the Court is duty bound to examine all the relevant factors and feel convinced that if the interim relief prayed for is not granted, the petitioner will suffer an injury, which cannot be compensated in terms of money or otherwise. The High Court must also feel satisfied that the injury to be suffered by the petitioner by non-grant of interim injunction or stay will be much more than the injury, which may be suffered by the non-petitioners on account of grant of interim injunction etc. The need for protecting the right of the petitioner must always be weighed against the corresponding need of protecting the non-petitioners against the injury which they may suffer in the event of grant of injunction or stay. Where the action of the

State and/or its agencies/instrumentalities is challenged on the ground of violation of legal or constitutional right of the petitioner and there is a clash of the right of the individual or group of individuals on the one hand and the right of the public at large on the other hand, the Court must carefully examine the entire matter and ensure that the public interest is not sacrificed in the name of protecting the individual right. If an order of injunction or stay is likely to prejudice the public cause or inflict injury on the members of the public by means of deprivation of basic amenities, the Court should be extremely loath and circumspect in entertaining the prayer for interim relief. In **Wander Ltd. v. Antox India (P) Ltd.**[4], the Supreme Court reiterated the above noted principle in the following words:

> "Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated
>
> > "...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies."
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> The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his

enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted."

In the light of the above, we shall now examine whether the discretion exercised by the learned Single Judge to restrain respondent Nos.9 and 10 from making construction on the land comprised in Survey No.203/1 and 201 of Manikonda Village is vitiated by an error of law and calls for interference under Clause 15 of the Letters Patent.

A reading of the order under challenge shows that the learned Single Judge made a detailed analysis of the factual matrix of the case and felt convinced that Ac.1654.32 gts. of land specified in Gazette Notification dated 6.4.2006 constitute wakf property; that the entries contained in the notification are final and conclusive unless the same are modified by the Wakf Tribunal; that in view of order dated 31.5.1957 passed by Nazim Atiyat and order dated 14.12.1961 passed by the learned Single Judge in Writ Petition No.666 of 1959, the land has to be treated as wakf attached to the Dargah and the State Government does not have any right to intermeddle with it; that letter dated 2.5.2007 written by District Collector, Ranga Reddy and D.O. letter dated 13.9.2007 are inconsequential; that the District Collector has to function to assist the Wakf Board as per the directions of the Chief Executive Officer and he does not have the power or authority to nullify the earlier orders, notifications or to act against the interest of the wakf properties.

Since the writ petition filed by respondent No.1 questioning the alienation of land by the Corporation to respondent Nos.9 to 15 has

been admitted, it is reasonable to presume that he succeeded in making out a prima facie case. Therefore, the conclusion recorded by the learned Single Judge on the issue of existence of prima facie case cannot be termed as erroneous

per se. However, this observation should not be misunderstood as foreclosing the right of the appellants herein and the private respondents to convince the Court that errata to Notification dated 9.2.1989 published in Andhra Pradesh Gazette dated 6.4.2006 cannot be treated as conclusive of the nature of the property specified therein and the disputed land cannot be treated as wakf because the Survey Commissioner did not conduct enquiry in terms of the mandate of Section 4 (3) and no report was submitted to the government and also on the ground that the Survey Commissioner did not have the jurisdiction to directly submit report to the Board. Moreover, at the time of final adjudication, the Court will have to consider whether, in the absence of registration of wakf in terms of Section 25 or deemed registration under Section 30 of the 1954 Act or registration under Section 36 of the 1995 Act or deemed registration under Section 43 thereof, the Board can exercise any right over the property in question. In this context, it is apposite to mention that the pleadings of the parties and documents filed by them do not show that any application was made for registration of the property in dispute as wakf under Section 25 of the 1954 Act or Section 36 of the 1995 Act. It is also not the pleaded case of respondent No.1 that the property in question had been registered as wakf before the commencement of the 1954 Act under any law for the time being in force. Therefore, it is extremely doubtful whether the

Board could exercise power, authority or jurisdiction over the subject land under Section 15 of the 1954 Act or Section 32 of the 1995 Act. The Court will also have to consider whether order dated 31.5.1957 passed by

Nazim Atiyat is conclusive of the wakf having been created in favour of the Dargah and whether that order and the one passed by the learned Single Judge in Writ Petition No.666 of 1959 are

binding on the State Government despite the fact that it

was not party to either of the proceedings. The Court will also have to consider the effect of Clauses 6, 10 and 16 of the Regulations and order dated 11.7.2001 passed by the learned Single Judge in WVMP No. 1747 of 2001 in Writ Petition No.12617 of 2001 – Syed Shah Saifullah Hussaini v. Secretary to Government, Revenue Department and others. At that stage, the averments contained in para 11 of affidavit filed by Shri S. Madar Saheb, Chief Executive Officer of the Board wherein the deponent has claimed that the Board alone is entitled to the amount collected by the government from third parties towards sale consideration will also acquire significance.

From what we have observed above, it is evident that several issues of facts and law would require detailed elucidation and adjudication by the Court. Therefore, at the interlocutory stage of the proceedings, we do not consider it proper to express any conclusive opinion on the merits of the rival pleas.

However, we have no hesitation to hold that the learned Single Judge committed serious error by passing order of injunction without even adverting to the affidavits filed on behalf of respondent Nos. 9 and 10 in the writ petition and without considering three important

factors i.e. balance of convenience, irreparable injury and public interest. The averments contained in para 9 of the affidavit of respondent No.1, which appear to have influenced the learned Single Judge in believing that no construction has so far been made on the land allotted to respondent Nos.9 and 10 are ex facie false and misleading. In the counter-affidavits filed by Shri Vijay Memon on behalf of M/s.Emaar Properties and Shri Pochendar Shenigarapu on behalf of M/s.Lanco Hills Technology Park Private Limited, it has been categorically averred that the two respondents have already raised construction by spending hundreds of crores of rupees. According to Shri Vijay Memon, the construction of Convention Centre and Club House is almost complete and various steps have been taken for development of the Golf Course by awarding contract to different parties, who, in turn, have purchased expensive equipments. The averments contained in the affidavit filed on behalf of respondent No.10 in the writ petition shows that it has already invested 1000 crores for purchase of land and execution of the projects by employing over 1000 persons. Respondent No.1 did not file reply affidavit to controvert the assertions contained in the affidavits of the two respondents, some of which have been extracted in the earlier part of this order. That apart, it is impossible to believe that a person who claim to be regular worshipper at the Dargah and who is a member of Legislative Council was not aware of the construction activity undertaken by respondent Nos.9 and 10 in the writ petition by engaging large work force and other employees. Therefore, we are constrained to observe that respondent No.1 has not approached the Court with clean hands. Unfortunately, the

learned Single Judge overlooked the averments contained in the affidavits filed on behalf of respondent Nos.9 and 10 in the writ petition regarding the status of construction and passed the order of injunction by assuming that the land allotted to respondent Nos.9 and 10 in the writ petition is vacant. We are sure that if the learned Single Judge had examined the issues of irreparable injury and balance of convenience in the backdrop of the categorical assertions made on behalf of respondent Nos.9 and 10 that they have spent hundreds of crores of rupees in raising construction over the land by engaging many thousands of workers and awarded contracts to third parties and that some of the projects are on the verge of completion, then he may not have passed the order of injunction and that too by ignoring the fact that respondent No.1 did not avail remedy by filing petition under Section 83 of the 1995 Act and moved this Court after considerable delay and that the Board did not question the allotment of land to the two appellants and private respondents by availing appropriate legal remedy and did not take steps in terms of Section 52 of the 1995 Act.

Be that as it may, having critically examined the entire record, we are convinced that respondent No.1 will not suffer any injury, much less irreparable injury if the appellants in Writ Appeal Nos.796 and 805 of 2007 are allowed to continue the construction activity on the land allotted to them. On the other hand, if the injunction order is not vacated, the two appellants are bound to suffer irreparable injury inasmuch as they will have to stop the ongoing projects, some of which are at the stage of completion. This may also result in depriving thousands of workers and other employees of their

livelihood, who are engaged in the construction and other activities undertaken by these appellants. If the writ petition is finally decided in favour of the petitioner, the Court may pass appropriate order for compensating the Board.

The element of balance of convenience is also against the grant of injunction. At the cost of repetition, we deem it necessary to observe that the Board which claims to be the custodian of the wakf properties in the State has objected to the allotment of land to the appellants in the two appeals and other private respondents on the ground of violation of Section 51 of the 1995 Act. In the affidavit filed by Shri S. Madar Saheb, Chief Executive Officer of the Board, it has been averred that if the government wanted to utilize the wakf property, then it should have taken prior sanction of the Board and the latter alone is entitled to the price collected by the government from third parties. The deponent has gone to the extent of saying that as an interim measure, the Court may direct the government to transfer the amount into the account of the Board. It is, thus, evident that the Board will feel satisfied if, in the event of success of the writ petition, the State Government is directed to transfer the money collected by it from the private respondents to the Board. Another course which can be adopted by the Court is to direct the State Government to allot alternative land to the Board for fulfilling the object of the wakf.

In the result, the appeals are allowed. The order of the learned Single Judge is set aside and WPMP No.21993 of 2007 in Writ Petition No.17192 of 2007 is dismissed.

The main writ petition shall be listed for hearing on 03.12.2007 along with other connected matters.

G.S. SINGHVI, CJ

October 26, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] AIR 1998 SC 972
[2] (1978) 2 APLJ 399
[3] AIR 2002 A.P. 313
[4] 1990 (Supp.) SCC 727